

STEPTOE & JOHNSON

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE

WASHINGTON, D. C. 20036

ROBERT J. CORBER

(202) 429-8108

1 6038

RECORDATION NO. _____ FILING DATE

NOV 17 1988 9 22 AM

INTERSTATE COMMERCE COMMISSION

November 16, 1988

No. 8-322A030
NOV 17 1988

Date

Fee \$ 13.00

ICC Washington, D. C.

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Room 2215
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and one copy of the documents hereinafter described. They relate to the railroad equipment identified below.

1. Lease Agreement dated as of November 1, 1984 between Brae Transportation, Inc., as lessor, and Texas, Oklahoma & Eastern Railroad Company, as lessee.

The equipment subject to this agreement consists of 208 railroad cars bearing the marks TOE 5103-5130, 5132-5170, 5200-5217, 5221-5227, 5229-5230, 5300-5319, 5321-5352, 5354-5366, 5500-5512, 5514-5549, inclusive.

The names and addresses of the parties to the documents are as follows.

Lessor: Brae Transportation, Inc.
One Hundred Sixty Spear Street
San Francisco, California 94105

Lessee: Texas, Oklahoma & Eastern
Railroad Company
810 Whittington Avenue
Hot Springs, Arkansas 71901

A fee of \$13.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.

A short summary of each document to appear in the index follows:

100 JH 100-
TH 100-
NOV 17 9 22 AM '88
HOTSPRINGS ARK

Robert J. Corber
Robert J. Corber

Ms. Noreta R. McGee
November 17, 1988
Page Two

1. Lease Agreement dated as of November 1, 1984
between Brae Transportation, Inc., and Texas, Oklahoma & Eastern
Railroad Company, covering railcars marked TOE 5103-5130, 5132-
5170, 5200-5217, 5221-5227, 5229-5230, 5300-5319, 5321-5352,
5354-5366, 5500-5512, 5514-5549, inclusive.

Very truly yours,



Robert J. Corber

Enclosures as stated

LEASE AGREEMENT

ORIGINAL
COPY

LEASE AGREEMENT, dated as of November 1, 1984, between BRAE TRANSPORTATION, INC., Four Embarcadero Center, Suite 3100, San Francisco, California 94111 ("BRAE"), as lessor, and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma Corporation, 810 Whittington Avenue, Hot Springs, Arkansas 71901 ("Lessee"), as lessee.

1. Scope of Agreement

A. BRAE agrees to lease to Lessee, and Lessee agrees to lease from BRAE, freight cars as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars."

B. It is the intent of the parties to this Agreement that BRAE shall at all times be and remain the lessor of the Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The lease pursuant to this Agreement with respect to each Car described on Schedule No.1 shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until ten (10) years have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on Schedule No.1, provided, however, that if any of the two hundred box cars subject to that certain Lease Agreement dated as of June 2, 1980 between the parties hereto and which are assigned to or otherwise used by railroads other than Lessee are returned to Lessee's railroad tracks, Lessee may terminate this Agreement with respect to such number of Cars described on Schedule No. 1 equal to that number of boxcars returned to Lessee's railroad tracks. The Lease pursuant to this Agreement with respect to each Car described on Schedule No. 2 shall commence when such Car has been delivered, as provided in Section 3A hereof, and shall continue until seven (7) years have expired from the actual date of delivery, as provided in Section 3A hereof, for the last of the Cars described on Schedule No. 2.

3. Supply Provisions

A. After the Cars have been marked with Lessee's railroad markings as provided in Section 4A hereof, BRAE will cause the Cars to be delivered to Lessee by causing them to be diverted to Lessee's railroad tracks. Each of the Cars shall be deemed to be delivered to Lessee upon being marked with Lessee's railroad markings, provided, however, that Lessee may reject any Car that is not in good operating condition. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after execution and delivery of this Lease Agreement as is consistent with mutual convenience and economy, but in no

event later than January 31, 1985. Lessee will assist BRAE in minimizing any transportation costs incurred in delivering the Cars to Lessee. Due to the nature of the railroad operations in the United States, BRAE can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of a Car, the Lease hereunder with respect thereto shall commence and Lessee shall pay to BRAE the rent for such Car set forth in this Agreement, all upon delivery of such Car by BRAE as provided herein. In order to move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), BRAE agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and BRAE, to issue movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange agreements and rules. Hereinafter, Interchange Rules shall mean all codes, rules, interpretations, laws or orders governing hire, service, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the AAR and any other organization, association, agency or governmental authority, including the ICC and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

B. Lessee agrees that so long as it shall have on lease any Cars, it shall not lease freight cars from any other party until it shall have received all of the Cars on the Schedule or Schedules, or January 31, 1985, whichever date is earlier. If, during any one calendar month the average utilization of all Cars falls below 78.3%, then BRAE may, by written notice to Lessee of such an event, require that Lessee load, or order the loading of, all Cars on its tracks prior to loading, or ordering the loading of, (i) any substantially similar boxcars of other railroads interchanged onto Lessee's tracks; (ii) any substantially similar boxcars placed in assigned service on Lessee's tracks subsequent to the date hereof, or (iii) any substantially similar boxcars purchased or leased by Lessee subsequent to the date hereof; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. For the purposes of this Agreement, the "obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks" referred to in the previous sentence shall mean only the following: (i) boxcars interchanged from Lessee's connecting carriers under load may be reloaded, provided, however, that such loadings shall be limited to 150 per calendar quarter; and (ii) in the event that there are fewer than 100 empty boxcars on Lessee's railroad tracks available for loading, including a reserve pool of up to 50 boxcars owned by BRAE but not subject to this Agreement but excluding boxcars spotted for loading at Weyerhaeuser's Valiant mill and any "bad ordered" Cars, which are defined as Cars unavailable due to maintenance or repair requiring more than twenty (20) man hours of labor, Lessee may order boxcars from other railroads in a number equal to the difference between Lessee's inbound boxcar forecast for the next 48 hour period and the Valiant mill's forecast of boxcar requirements for such period. The standard of 150 reloadings and 100 empty boxcars described in subprovisions (i) and (ii), respectively, of this Section 3B, shall be adjusted proportionately in the event that Lessee's aggregate boxcar loadings increase or decrease by more than 25% from Lessee's 1984 loadings. In the event that Lessee intends to load or order the loading of foreign cars as set forth in subprovision (ii) above and Lessee is under written priority notice from BRAE, Lessee

shall advise BRAE of the actions it has taken as required hereby. In no event shall Lessee act as a switching railroad for any facility currently owned by Weyerhaeuser Company and presently operating on Lessee's tracks with respect to any boxcars substantially similar to the Cars. Any priority loading required under this paragraph shall be commenced as soon as practicable after receipt of BRAE's notice by Lessee (but not to exceed two days) and shall continue until such time as the average utilization of all Cars shall equal or exceed 78.3% for one calendar month. While priority loading is in effect, Lessee shall, upon reasonable request by BRAE, furnish to BRAE its records with respect to loadings and shipments. In the event that Lessee does not priority load the Cars in violation of this Section 3B, Lessee agrees to remit to BRAE \$500 as liquidated damages for each time that a boxcar is loaded in violation of this Section 3B, provided, however, that Lessee shall be obligated to make such payments to BRAE only until BRAE has received revenues equal to the revenues the Cars would have earned if they had earned hourly car hire payments equal to 78.3% Utilization (calculated monthly) and had earned mileage charges equal to 65 miles per day per Car (calculated monthly), but excluding any bad ordered Cars from such minimum revenue calculation.

4. Railroad Markings and Record Keeping

A. BRAE and Lessee agree that on or before delivery of any Cars to Lessee, such Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. BRAE will permit Lessee to submit a bid for the marking of the Cars subject to this Agreement. BRAE and Lessee further agree that any Car may also be marked with the name of BRAE and any other information required by an owner or secured party under a financing agreement entered into by BRAE in connection with the acquisition of such Car. All such names, insignia and other information shall comply with all applicable regulations.

B. At no cost to Lessee, BRAE shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but shall not be limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; provided, however, that BRAE shall not be responsible for any fee assessed by such publication for the listing or registration of Lessee itself, as distinguished from the registration of additional equipment to Lessee. BRAE shall, on behalf of Lessee, perform all record-keeping functions (except car accounting) related to the use of the Cars by Lessee and other railroads in accordance with the Interchange Rules and AAR railroad interchange agreements, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as BRAE shall select.

D. All record keeping performed by BRAE hereunder and a record of all payments, charges and correspondence related to the Cars shall be separately recorded and maintained by BRAE in a form suitable for reasonable inspection by Lessee from time to time during BRAE's regular business hours. Lessee shall supply BRAE with such reports, including daily telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad line and Lessee's obligations under this Agreement as BRAE may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, BRAE will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its Lease Term, including but not limited to property and ad valorem taxes, repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee. Lessee shall, pursuant to the Interchange Rules, inspect all Cars interchanged to it to insure that such Cars do not contain refuse, and are in good repair, condition and working order. Lessee shall be liable to BRAE for any cleaning, servicing, or repairs required but not noted at the time of interchange. Lessee shall promptly report to BRAE any damage or other condition of any Car which Lessee considers will make such Car unsuitable for use. Lessee hereby transfers and assigns to BRAE all of its right, title and interest in any warranty in respect of the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by BRAE at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to BRAE.

B. Except as provided in Section 5A hereof, BRAE, at its sole expense, shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of BRAE, and at BRAE's sole expense, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks, in accordance with the Interchange Rules, and at rates not in excess of those published by the AAR for labor and materials, as may be reasonably requested by BRAE. BRAE shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs, in accordance with the Interchange Rules and standards, at BRAE's expense, to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without BRAE's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without BRAE's prior written consent, Lessee shall be liable to BRAE for any revenues lost due to such alteration and any costs reasonably incurred by BRAE to restore any Car to its condition prior to such Lessee change. Title to any such alteration, improvement or addition shall be and remain with BRAE.

C. Lessee will, at all times while this Agreement is in effect, be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under the Interchange Rules for freight cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by obtaining insurance or maintaining a self-insurance program satisfactory to BRAE. In the event Lessee elects to carry insurance, Lessee shall furnish to BRAE concurrently with the execution hereof, and thereafter at intervals of not more than 12 calendar months, certificates of insurance evidencing bodily injury and property damage insurance signed by an independent insurance broker with 30 days written notice of cancellation to BRAE. All insurance shall be taken out in the name of Lessee and BRAE (or its assignee) as their interests may appear.

D. BRAE agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed

during the Lease Term, except taxes on income imposed on Lessee and sales or use taxes imposed on the car hire revenues which are retained by Lessee. BRAE shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. BRAE and Lessee shall each pay the sales or use taxes imposed on the car hire revenues earned by them respectively under the terms of this Agreement. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars.

6. Lease Rental

A. Lessee agrees to pay the following rent to BRAE for the use of the Cars:

(i) BRAE shall receive all payments earned by Lessee from other railroad companies for their use or handling of the Cars, including but not limited to mileage charges and hourly car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments"). BRAE shall retain the first \$13.25 per day of hourly car hire payments and all mileage charges received from other railroad companies for their use and handling of the Cars, and shall remit to Lessee any hourly car hire payments in excess of \$13.25 per Car per day. All sums due hereunder from BRAE shall be paid monthly in arrears within 60 days after the end of each calendar month in which such sums are earned and collected.

(ii) In addition, BRAE will receive, as additional rental, all monies earned by the Cars prior to their Initial Loading.

B. In the event damage beyond repair or destruction of a Car has been reported in accordance with the Interchange Rules and the appropriate amount due as a result thereof is received by BRAE, the damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that car hire payments ceased. Any amounts received by Lessee as a result of such damage will be promptly paid over to BRAE.

C. If at any time during a calendar quarter, it is mathematically certain that the Utilization in such calendar quarter cannot be equal to or greater than 70%, BRAE may, at its option and upon not less than ten (10) days prior written notice to lessee, terminate this Agreement as to such Cars as BRAE shall determine; provided, however, that prior to such termination Lessee may have the option of paying BRAE an amount equal to the difference between the amount BRAE actually received during said calendar quarter and the amount BRAE would have received had Utilization equal to 70% been achieved; and, provided, further, that BRAE may only terminate that number of Cars such that Utilization of 70% would have been achieved by the remaining Cars. For the purpose of determining Utilization, "Car Hour" shall mean one hour during which one Car is on lease hereunder, commencing on the Initial Loading of such Car. For the purpose of this Agreement, "Utilization" shall mean with respect to any period a fraction the numerator of which is (x) the aggregate number of Car Hours for which Payments are earned by the Lessee during such period, and the denominator of which is (y) the aggregate number of Car Hours during such period, excluding such number of Car Hours, or portion thereof, that any Car is bad ordered.

D. BRAE and Lessee hereby acknowledge that, as of the date of this Lease, based upon the car hire rates set forth in Section 6A and the current mileage rates, it is contemplated that the Cars will earn an aggregate average amount of \$553 per Car per month, of which BRAE would be entitled to retain \$401 (73%), and Lessee would receive \$152 (27%). If any governmental agency or any court shall at any time issue any order,

the effect of which would be to (1) increase, decrease or eliminate the applicable car hire or mileage rates, or (2) cause the Cars to incur storage charges or empty mileage charges while on other railroads, then, as of the effective date of such order, each party shall be entitled to the same percentage of earnings per Car as set forth in this Section 6D, provided, however, that such percentage shall be adjusted to reflect changes in the UMLER car hire tables. An example of this calculation is set forth in Exhibit A. BRAE shall be responsible for paying any and all such charges and fees due other railroads for storage of the Cars or for empty mileage charges due other railroads with respect to the Cars.

E. BRAE agrees that Lessee may enter into bilateral or other agreements between Lessee and other railroads, provided, however, that no such agreement may provide that BRAE shall receive car hire earnings less than \$13.25 per Car per day or mileage payments less than the rates published in the Official Railway Equipment Register and the Universal Machine Language Equipment Register unless BRAE has given its prior written consent to such agreement.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent cars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Cars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by BRAE in connection with the acquisition of some or all of the Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be paid directly to such party and/or that Cars immediately be returned to such party.

B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either BRAE or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

C. Lessee will not directly or indirectly create, incur, assume, or suffer to exist (except as provided in Section 7A) any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule hereto. Lessee will promptly, at its expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days after written notice.

(iii) Any act of insolvency or bankruptcy by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default, BRAE may, at its option, terminate this Agreement (which termination shall not release Lessee from any obligation to pay any and all rent or other sums that may then be due or accrued to such date to BRAE or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may:

(i) Proceed by any lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear BRAE's costs and expenses, including reasonable attorneys' fees) in securing such enforcement, or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars whereupon all right and interest of Lessee in the Cars shall terminate, and thereupon BRAE may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee.

9. Termination

At the expiration or earlier termination of this Agreement as to any Car, Lessee will surrender possession of such Car to BRAE free of refuse by delivering the same to BRAE on Lessee's railroad tracks. For any Car not returned in the condition required hereby, Lessee shall be liable to BRAE for all cleaning costs required to place such Car in proper condition. Lessee shall be responsible for removing Lessee's railroad markings and stenciling new markings as designated by BRAE as follows: (i) in the event a Car is on Lessee's railroad tracks, Lessee will perform such stenciling within thirty (30) days of expiration or earlier termination; (ii) in the event a Car is not on Lessee's railroad tracks, BRAE may choose a contractor to perform such stenciling and Lessee shall reimburse BRAE for the cost thereof subject, however, to a maximum reimbursement equal to

Lessee's then current charge to a third party for performing comparable stenciling services. After the removal and restenciling of markings, Lessee shall use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment. Lessee shall provide up to sixty (60) days free storage on its railroad tracks for BRAE or the subsequent lessee of any terminated Car. If any Car is terminated pursuant to Section 8 hereof prior to the end of its Lease Term, Lessee shall be liable to BRAE in addition for all costs and expenses incurred by BRAE to move such Car to a location designated by BRAE.

10. Indemnities

BRAE will defend, indemnify and hold Lessee harmless from and against (1) any and all claims based upon loss or damage to the Cars, normal wear and tear excepted, unless occurring while Lessee has physical possession of the Cars and (2) any other type of claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars (other than loss or physical damage to the Cars as provided in (1) above) unless occurring through the fault of Lessee.

11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated, has all necessary corporate power and authority, permits and licenses to perform its obligations under this Agreement, and has permanent operating authority as common carrier by rail.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to BRAE in writing, nor is Lessee a party to any agreement or instrument nor subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the ability of the Lessee to perform its obligations under this Agreement.

12. Inspection

BRAE shall at any time during normal business hours have the right to enter the premises of Lessee where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee agrees to use its best efforts to arrange for such inspections by BRAE of any Cars which may be located on property not owned by Lessee. Lessee shall immediately notify BRAE of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the

names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify BRAE in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to BRAE promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not, without the prior written consent of BRAE, assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void; provided, however, that Lessee shall not be prohibited from placing Cars in assigned service at another majority-owned common carrier railroad subsidiary of Weyerhaeuser Company. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars to be leased hereunder and may relate to all or part of the Cars on any Schedule hereto.

Lessee also agrees to acknowledge, upon receipt, any security assignment of this Agreement by BRAE to an owner or secured party under any financing agreement or lease entered into by BRAE in connection with the acquisition of all or part of the Cars leased hereunder. Lessee hereby agrees that any such assignment may be with respect to all or part of the Cars on any Schedule hereto. Any assignment of this Agreement by BRAE to an owner or secured party shall not subject that owner or secured party to any of BRAE's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against BRAE.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by BRAE in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 hereof and in furtherance of this Agreement. BRAE is expressly authorized to insert the appropriate railcar reporting markings and Car description on the Schedule(s) at such time as notice is delivered to BRAE by Lessee as to the correct reporting marks and physical description to be utilized.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

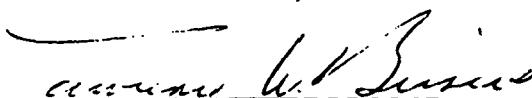
D. No failure or delay by BRAE or Lessee shall constitute a waiver or otherwise affect or impair any right, power or remedy available to BRAE or Lessee nor shall any waiver or indulgence by BRAE or Lessee or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or three days after deposit in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth in the preamble to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BRAE TRANSPORTATION, INC.

By 

Printed Name LAWRENCE W. BRISCOE

Title PRESIDENT

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By 

Printed Name John D. Selig

Title President

EQUIPMENT SCHEDULE I

BRAE TRANSPORTATION, INC. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

1.	<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>
	200	Plate C or mutually acceptable Plate B, 70 ton, 10" end-of car cushioning Boxcars	XM	[to follow]

2. BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease in this Schedule.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BRAE TRANSPORTATION, INC.

By 

Printed Name LAWRENCE W. BRISCOE

Title PRESIDENT

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By 

Printed Name John D. Selig

Title President

EQUIPMENT SCHEDULE 2

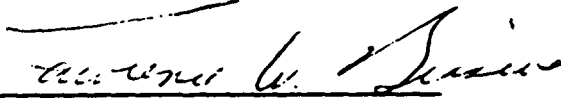
BRAE TRANSPORTATION, INC. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

1.	<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>
	300	Plate C or mutually acceptable Plate B, 70 ton, 10" end-of car cushioning Boxcars	XM	[to follow]

2. BRAE and Lessee hereby incorporate by reference all of the terms, conditions and provisions of the Lease in this Schedule.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule as of the date first written above.

BRAE TRANSPORTATION, INC.

By 

Printed Name LAWRENCE W. BRISCOE

Title PRESIDENT

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By 

Printed Name John D. Selig

Title President

STATE OF ARKANSAS)
) SS
COUNTY OF GARLAND)

On this 30th day of November, 19 84, before me personally appeared John D. Selig, to me personally known, who being by me duly sworn says that such person is President of Texas, Oklahoma & Eastern Railroad Company, and that the foregoing Lease Agreement, and Equipment Schedules No. 1 and 2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Margaret A. French (seal)
Notary Public

My Commission Expires April 11, 1991

STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 2nd day of January, 19 85, before me personally appeared LAWRENCE W. BRISCOE, to me personally known, who being by me duly sworn says that such person is PRESIDENT of BRAE Transportation, Inc., and that the foregoing Lease Agreement, and Equipment Schedules No. 1 and 2 were signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instruments were the free acts and deeds of such corporation.

Leann Lloyd (seal)
Notary Public

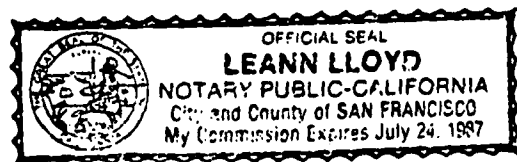


EXHIBIT A

Assumptions for Section 6D

- A. Average car hire rate for 500 Cars = \$.85/hour
- B. Average mileage rate for 500 Cars = \$.066/mile
- C. Average daily mileage (mpd) for 500 Cars = 85
- D. Expected utilization of 500 Cars = 70%
- E. Expected average total revenue per month for a Car =
- | | |
|---|---------------|
| $(.85) \times (24 \text{ hrs.}) \times (365 \text{ days}) / (12 \text{ mos.}) \times (.70) =$ | \$434 |
| $+ \quad (.066) \times (85 \text{ mpd}) \times (365) / (12) \times (.70) =$ | +119 |
| | <u>\$553.</u> |
- F. Expected average BRAE revenue per month for a Car =
- | | |
|--|-----------------------------|
| $(\$13.25) \times (365) / (12) \times (.70) =$ | \$282 |
| $\$282 + \$119 =$ | <u>\$401 (73% of total)</u> |
- G. Expected average Lessee revenue per month for a Car =
- | | |
|-------------------|-----------------------------|
| $\$553 - \$401 =$ | <u>\$152 (27% of total)</u> |
|-------------------|-----------------------------|

Each of the above assumptions and resultant calculations may increase or decrease from time to time as car hire and mileage rates are changed. Assumptions C and D will always remain the same. If the Cars delivered to Lessee have car hire and mileage rates different than those specified in A and B above, the revenue assumptions in Section 6D will be recalculated accordingly.

The cases that follow illustrate how changes in car hire and mileage rates would modify both BRAE's and Lessee's revenues.

CASE I: Umler table car hire and mileage rates are unchanged while storage and/or mileage charges equal \$100 per Car per month.

- A. BRAE Revenue:
- | | |
|----------------------------------|----------|
| $(\$553 - \$100) \times (.73) =$ | \$323.39 |
|----------------------------------|----------|
- B. Lessee Revenue:
- | | |
|----------------------------------|----------|
| $(\$553 - \$100) \times (.27) =$ | \$119.61 |
|----------------------------------|----------|

CASE II: Umler table car hire and mileage rates are reduced by 20% (none of this reduction is due to the yearly car-hire decrease as a result of car aging.)

A. BRAE Revenue:

$$(\$553) \times (.80) \times (.73) = \$322.95$$

B. Lessee Revenue:

$$(\$553) \times (.80) \times (.27) = \$119.44$$

CASE III: Umler table car hire rates are reduced by approximately 3% to account for the aging of the cars by an additional year.

A. Total Revenue:

$$[(\$434) \times (.97)] + \$119 = \underline{\$540}$$

B. BRAE Revenue:

$$(\$282) + (\$119) = \underline{\$401 \text{ (74\% of total)}}$$

C. Lessee Revenue

$$(\$540) - (\$401) = \underline{\$139 \text{ (26\% of total)}}$$

CASE IV: Umler table car hire and mileage rates are increased by 10% after the cars age one year (3% annual reduction as provided in Case III).

A. BRAE Revenue:

$$(\$540) \times (1.1) \times (.74) = \underline{\$439.56}$$

B. Lessee Revenue:

$$(\$540) \times (1.1) \times (.26) = \underline{\$154.44}$$

ORIGINAL

LEASE AMENDMENT AGREEMENT

This Agreement is made as of this 1st day of November, 1984 between BRAE Transportation, Inc., a Delaware corporation, successor of BRAE Corporation ("BRAE"), Railease Inc., a Washington Corporation ("Railease"), collectively the "Lessor", and Texas, Oklahoma & Eastern Railroad Company, an Oklahoma corporation ("TO&E"), and Mississippi and Skuna Valley Railroad Company ("MSV"), collectively the "Lessee".

RECITALS

- A. Lessor and Lessee have entered into the following lease agreements which are collectively referred to as the "Original Leases":
 - 1. Agreement, dated June 1, 1980, between Railease and TO&E concerning 200 XP boxcars.
 - 2. Agreement, dated July 1, 1980, between BRAE and TO&E concerning 50 XP boxcars.
 - 3. Agreement, dated July 2, 1980, between BRAE and TO&E concerning 50 XP boxcars; and
 - 4. Agreement, dated January 4, 1983, among MSV, TO&E, and BRAE concerning the assignment of 25 XP boxcars by the MSV to the TO&E.
- B. Lessor and Lessee have also entered into the following agreements concurrently with this Agreement:
 - 1. Lease Agreement, dated November 1, 1984, pursuant to which BRAE is leasing 500 boxcars to TO&E (the "New Lease");
 - 2. Assignment Agreement, dated November 1, 1984, pursuant to which TO&E is assigning 100 boxcars, to the Old Augusta Railroad Company; and
 - 3. Letter Agreement, dated November 1, 1984, pursuant to which BRAE agrees to consent to the Assignment Agreement with Old Augusta Railroad Company and to arrange for the assignment of an additional 100 boxcars, currently under lease by TO&E from BRAE.
 - 4. Letter Agreement, dated November 1, 1984, pursuant to which TO&E is storing 50 boxcars owned by BRAE.
- C. Lessor and Lessee desire to amend the Original Leases as set forth herein.

AGREEMENTS

NOW THEREFORE, it is agreed as follows:

I. Section 3B of the original Leases is deleted and replaced by the following:

"B. If, during any one calendar month the average utilization of all Cars falls below 78.3%, then BRAE may, by written notice to Lessee of such an event, require that Lessee load, or order the loading of, all Cars on its tracks prior to loading, or ordering the loading of, (i) any substantially similar boxcars of other railroads interchanged onto Lessee's tracks; (ii) any substantially similar boxcars placed in assigned service on Lessee's tracks subsequent to the date hereof, or (iii) any substantially similar boxcars purchased or leased by Lessee subsequent to the date hereof; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. For the purposes of this Agreement, the "obligations to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks" referred to in the previous sentence shall mean only the following: (i) boxcars interchanged from Lessee's connecting carriers under load may be reloaded, provided, however, that such loadings shall be limited to 150 per calendar quarter; and (ii) in the event that there are fewer than 100 empty boxcars on Lessee's railroad tracks available for loading, including a reserve pool of up to 50 boxcars owned by BRAE but not subject to this Agreement but excluding boxcars spotted for loading at Weyerhaeuser's Valiant mill and any "bad ordered" Cars, which are defined as Cars unavailable due to maintenance or repair requiring more than twenty (20) man hours of labor, Lessee may order boxcars from other railroads in a number equal to the difference between Lessee's inbound boxcar forecast for the next 48 hour period and the Valiant mill's forecast of boxcar requirements for such period. The standard of 150 reloadings and 100 empty boxcars described in subprovisions (i) and (ii), respectively, of this Section 3B, shall be adjusted proportionately in the event that Lessee's aggregate boxcar loadings increase or decrease by more than 25% from Lessee's 1984 loadings. In the event that Lessee intends to load or order the loading of foreign cars as set forth in subprovision (ii) above and Lessee is under written priority notice from BRAE, Lessee shall advise BRAE of the actions it has taken as required hereby. In no event shall Lessee act as a switching railroad for any facility currently owned by Weyerhaeuser Company and presently operating on Lessee's tracks with respect to any boxcars substantially similar to the Cars. Any priority loading required under this paragraph shall be commenced as soon as practicable after receipt of BRAE's notice by Lessee (but not to exceed two days) and shall continue until such time as the average utilization of all Cars shall equal or

exceed 78.3% for one calendar month. While priority loading is in effect, Lessee shall, upon reasonable request by BRAE, furnish to BRAE its records with respect to loadings and shipments. In the event that Lessee does not priority load the Cars in violation of this Section 3B, Lessee agrees to remit to BRAE \$500 as liquidated damages for each time that a boxcar is loaded in violation of the Section 3B, provided, however, that Lessee shall be obligated to make such payments to BRAE only until BRAE has received revenues equal to the revenues the Cars would have earned if they had earned hourly car hire payments equal to 78.3% Utilization (calculated monthly) and had earned mileage charges equal to 65 miles per day per Car (calculated monthly), but excluding any bad ordered Cars from such minimum revenue calculation."

2. Section 3D of the Original Leases is amended by adding the following:

"It is also understood and agreed that the boxcars subject to the Original Leases and the New Lease shall have equal priority as to loading on Lessee's railroad."

3. A new Section 3E is added to the Original Leases as follows:

"E. In the event (i) Utilization of the total Lessor boxcar fleet (825 cars) shall be less than 75% in any calendar quarter and (ii) boxcars subject to the Original Leases receive a lesser number of loads than they would have received if Lessee's loadings had been divided proportionally between the boxcars subject to the New Lease and the boxcars subject to the Original Leases, then Lessee agrees to pay liquidated damages to Lessor in the amount of \$144 for each load less than the proportional share of loads in the boxcars subject to the Original Leases. This calculation of liquidated damages shall be made quarterly, and, at Lessee's option, Lessee may make payment to Lessor at such time, or, if in the succeeding calendar quarter the boxcars subject to the Original Leases shall have received additional loads in excess of the proportional share of loads, Lessee shall receive credit for each additional load. At the end of such succeeding calendar quarter, the liquidated damages shall be recalculated to take into account credit earned for additional loads, and any remaining liquidated damages shall be paid at such time."

4. A new Section 3F is added to the Original Leases as follows:

"F. Utilization of Cars for any period shall mean a fraction, the numerator of which is (x) the aggregate number of Car Hours in such period that car hire payments are earned by Cars and the denominator of which is (y) the aggregate number of Car Hours during such period. Car Hour shall mean one hour during which one Car is on lease hereunder, commencing upon the initial loading of such Car, less any hours, or portion thereof, in which the Cars are unavailable because of maintenance or repair."

5. Section 6A of the Original Leases is deleted and replaced by the following:

- "A. (i) Lessee agrees to pay Lessor as annual rent for the use of the Cars all payments earned by Lessee from other railroad companies for their use or handling of the Cars, including but not limited to mileage charges and hourly car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments"); provided, however, that Lessee may, after notice to Lessor, reduce the rate of hourly car hire payments other railroads pay to Lessee by an amount not to exceed thirteen and one-half percent (13.5%).
- (ii) The rent payable by Lessee to Lessor under this Section 6.A shall be derived from the revenues earned by the Cars. In no event shall Lessee be required to pay rent to Lessor under this Agreement in an amount in excess of the total revenues earned by the Cars.
- (iii) If any governmental agency, or any court shall at any time issue any order, the effect of which would be to (1) increase or decrease the applicable car hire or mileage rates, or (2) cause the Cars to incur storage charges or empty mileage charges while on other railroads, then, as of the effective date of such order, Lessee's right to reduce the rate of hourly car hire payments, as provided in Section 6.A(i), shall be increased or decreased by the same percentage that Lessor's rent for the Cars is increased or decreased. In the event of a change in payment method, including but not limited to the elimination of hourly car hire payments, then Lessee shall be entitled to the same opportunity to reduce payments as it has in Section 6A(i) with respect to any new method of payment."


6. Section 13E of the Agreement, dated June 1, 1980, is amended to read as follows:

"E. This Agreement, and all amendments thereto, shall be governed by and construed according the the laws of the State of California."

7. Except as amended herein, the terms and conditions of the Original Leases shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment Agreement as of the date first above written.

BRAE TRANSPORTATION, INC.

By 

Printed Name LAWRENCE W BRISCOE

Title PRESIDENT

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By 

Printed Name John D. Selig

Title President

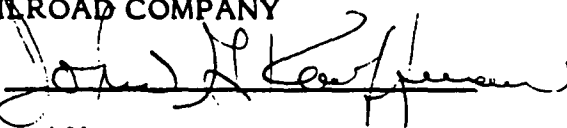
RAILEASE, INC.

By 

Printed Name Robert W. Dickey

Title President

MISSISSIPPI & SKUNA VALLEY
RAILROAD COMPANY

By 

Printed Name _____

Title _____

EQUIPMENT SCHEDULE 1

BRAE TRANSPORTATION, Inc. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

<u>Number of Cars</u>	<u>Description</u>	<u>Design- ation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
25	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5100-5124	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5200-5227	50' 6" in length
2	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5229-5230	50' 6" in length
67	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5300-5366	50' 6" in length
28	Plate B, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5400-5427	50' 6" in length
50	Plate B, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5500-5549	50' 6" in length
200				

EQUIPMENT SCHEDULE 2

BRAE TRANSPORTATION, Inc. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

<u>Number of Cars</u>	<u>Description</u>	<u>Design- ation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
74	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5000-5073	50' 6" in length
46	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5125-5170	50' 6" in length
67	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5600-5666	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5668-5695	50' 6" in length
57	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5700-5756	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5800-5827	50' 6" in length

300

PRU/AETNA

Equipment Trust Agreement dated as of November 1, 1978 between
BRAE Transportation, Inc. (formerly BRAE Corporation) and
Morgan Guaranty Trust Company of New York.

CARS: TOE 5103-5130, 5132-5170
5200-5217, 5221-5227
5229-5230, 5300-5319
5321-5352, 5354-5366
5500-5512, 5514-5549

Lease Agreement, dated as of November 1, 1984 between BRAE
Transportation, Inc. and Texas, Oklahoma & Eastern Railroad Company

SECURED PARTY: Morgan Guaranty Trust Company of New York
30 West Broadway
New York, New York 10015

LESSOR: BRAE Transportation, Inc.
160 Spear Street, 16th Fl.
San Francisco, Ca 94105

LESSEE: Texas, Oklahoma & Eastern Railroad Company
810 Whittington Avenue
Hot Springs, Arkansas 71901